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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,131	08/08/2003	Abedan Kanthasamy	ELS-28-07-02	3841
7590	07/29/2005		EXAMINER	
Kenneth C. Brooks Law Office of Kenneth C. Brooks P.O. BOX 10417 Austin, TX 78766				SAFAVI, MICHAEL
		ART UNIT	PAPER NUMBER	3673

DATE MAILED: 07/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/637,131	KANTHASAMY, ABEDAN	
	Examiner	Art Unit	
	M. Safavi	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 May 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,5-24 and 26-30 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,2,5-24 and 26-30 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/16/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 15-24 and 26-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not appear to have originally disclosed "said force spreading plate having a detent extending transversely to said first and second planes", as recited in claim 15, or "said detent extending transversely to said first and second planes" as is recited in claim 28.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-24 and 26-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear as to what is being defined by the language of claims 15 and 28, particularly lines 20-21 of claim 15 and lines 5-6 of claim 28, since the specification does not appear to describe "said force spreading plate having a detent extending transversely to said first and second planes."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 5-24, and 26-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Wiggins '823. Wiggins discloses, Fig. 2, 3, 4, and 7-10, a futon structure having back and seat platforms 12 and 11 with "mortise plate" 41/40 serving to space the back platform from the seat platform as by detent 40, whether in a seating position or a bed position, and is disposed at opposite ends of the rear cross member, (i.e., either side of futon). First and second end frames have first and second legs 13 disposed thereon. Pair of spaced apart parallel cross members are at 30, 31. Journal with cam is at 19/18 as well as 16.

Claims 1-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Roma et al. Roma et al. discloses, Fig. 1-3, 6, and 7, a futon structure having back and seat platforms 18 and 22 with "mortise plate" 25 serving to space the back platform from the seat platform as by detent, (pintle), whether in a seating position or a bed

position, and is disposed at opposite ends of the rear cross member. First and second end frames 12A, 12B have first and second legs disposed thereon. Pair of spaced apart parallel cross members are at 14, 16. Journal with cam is at 104/100, 106/102.

Claims 1-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Dodge. Dodge discloses, Fig. 2-4, a futon structure having back and seat platforms 14 and 12 with "mortise plate", (extension of 46 beyond 50), serving to variably space the back platform from the seat platform as by detent 54, whether in a seating position or a bed position, and is disposed at opposite ends of the rear cross member. First and second end frames 16, 16 have first and second legs 22, 24 disposed thereon. Pair of spaced apart parallel cross members are at 18, 20. Journal with cam is at 30/42, 36/44.

Claims 1-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Hester. Hester discloses, Fig. 1-5, a futon structure having back and seat platforms 12 and 11 with "mortise plate", 38/39 serving to variably space the back platform from the seat platform as by detent 39, whether in a seating position or a bed position, and is disposed at opposite ends of the rear cross member. First and second end frames 16, 16' have first and second legs 14, 15 disposed thereon. Pair of spaced apart parallel cross members are at 18, 19. Journal with cam is at 17/31, 37/36.

Claim 28 is rejected under 35 U.S.C. 102(b) as being anticipated by Grossman et al. '833. Grossman et al. discloses, Fig. 2, a futon having a back

platform 44 pivotally coupled to a seat platform 30 to move between seat and bed positions. The futon comprising a force spreading mortise plate 66 coupled between said back platform and said seat platform, the force spreading plate having a detent, (any extending portion thereof such as 68 or 70, for example), with the seat platform extending in a first plane and the back platform extending in a second plane. The detent extends transversely to said first and second planes to establish an angular relationship between said seat and back platforms in said seat position.

Claims 1, 2, 5-24, and 26-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Barton et al. '952. Barton et al. discloses, Figs. 1, 3, 4, 7, and 8, a futon having a back platform 14 pivotally coupled to a seat platform 12 to move between seat and bed positions. The futon comprising a force spreading mortise plate 46 coupled between said back platform and said seat platform, the force spreading plate having a detent, (any extending portion thereof such as portion or corner formed by 112, 120, for example), with the seat platform extending in a first plane and the back platform extending in a second plane. The detent extends transversely to said first and second planes to establish an angular relationship between said seat and back platforms in said seat position. First and second end frames 16, (either side), have first and second legs 58, 66 disposed thereon. Pair of spaced apart parallel cross members are at 72, 74. Journal with cam is at 78/86, 82/90, 76/84, 80/88.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5-24, and 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grossman et al. in view of any of Barton et al. or Stoler et al. or Fitts.

Grossman et al. discloses the claimed invention except for specifically describing a cam and journal system between coupled between said seat platform, said back platform and said first and second end frames. However, Barton et al. discloses a cam and journal system between coupled between said seat platform, said back platform and said first and second end frames as can be seen by at 78/86, 82/90, 76/84, 80/88. Stoler et al. discloses a cam and journal system between coupled between said seat platform, said back platform and said first and second end frames as can be seen by at 21/22, 24/25 of Fig. 1 or 21'/22', 24'/25' of Fig. 11. Fitts discloses a cam and journal system between coupled between said seat platform, said back platform and said first and second end frames as can be seen by at 36/37/38, 34/35, 41/42 of Figs. 4, 5, and 7. Therefore, to have provided the Grossman et al. futon assembly with a cam and journal system between coupled between said seat platform, said back platform and said first and second end frames along with or in place of hinge 28, thus allowing relative movement between seat platform, said back platform and said first and second

end frames, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by any of Barton et al., Stoler et al., and Fitts.

Response to Arguments

Applicant's arguments with respect to claims 1, 2, 5-24, and 26, and 27 have been considered but are moot in view of the new ground(s) of rejection. However, each of Wiggins, Roma et al., Dodge, and Hester does teach, as is set forth in the respective rejections, having a "detent of a mortise plate" disposed between the seat and back platforms to establish an angular relationship therebetween that defines a seat position of the futon. The language of claims 1, 2, 4-24, and 26-30 fails to specifically set forth structural features that would define over what is disclosed by the applied prior art references.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on May 16, 2005 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 354

M. Safavi
July 22, 2005